A Bill to amend the Cochin Court Fees Regulation.

Mr. C. A. Kunjunni Raja.—Sir, I beg to move for the introduction of the Cochin Court Fees Regulation amendment Bill.

Dr. A. G. Menon.—I beg to second the motion.

Mr. C. A. Kunjunni Raja.—You are aware, as the law now stands, in suits on leases and on titles for the eviction of lands, the court fee has to be levied on 5 times and 15 times the annual rent respectively. In British India, generally in all provinces, it is the Sirkar Revenue which is taken into account. Normally in suits on title the court fee here will be 10 times the court fee prevailing in British India. How this is arrived at I will explain. Normally the Land Revenue is fixed to be 1/3 of the produce and it is commuted into money at a very low rate. Under the prevailing market rate of the produce of the soil, if the commutation is taken into account, Land Revenue will come to only 1/10 of the yield. That is, the present rate in Cochin is 10 times the prevailing rate in British India. Of course, in the Madras Presidency, one year's *pattom* is the basis for the calculation of court fees for suits on leases, and that will be 1/5 of the rate here.

President.—The rate in Cochin is 10 times higher than in British India?

Mr. C. A. Kunjunni Raja.—Normally in many provinces the court fee is much less for suits in ejectment. Of course, in other matters the court fee there is higher, but not to such an abnormal extent. In Madras in money suits it is 11½ per cent on the valuation. In Cochin for money suits it is only 6¼ per cent. That means, excepting suits on title and leases, the court fee there is roughly 75 per cent higher than here, and in Cochin suits in ejectment will be valued 1000 per cent higher than there. This is an abnormal factor, and it is to remove that this Bill is brought in. And in Travancore also I find the law is to this effect:— Clause (5), "Ejectment and *Kanom* suits—ten times the annual gross profit minus the assessment paid, if any, to Sirkar. Clause (6), trees and houses—market value." When compared to Travancore also, our rate is very much higher. It is for these reasons that I move for the introduction of this Bill. This is not a matter in which the land-lord alone will be benefited, To think so is a mistaken impression. Under *Kanom* tenants, *Verumpattom* tenants generally hold property, and in eviction suits filed by *Kanom* tenants also, they have to pay the very same court fee. All the reasons have been explained at length in the Objects and Reasons, and I have nothing more to add. Since it is the tenant who ultimately pays the costs, this legislation

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confers a benefit on the tenants also. With these words, I move for the introduction of the Bill.

President.—What is it in the original section?

Mr. C. A. Kunjunni Raja.—Five times and 15 times the annual rent.

President.—You want to omit the words 'annual rent' and substitute the words 'Sirkar Revenue' in its place. In the original section it is stated five times the annual rent in the case of leases and 15 times the annual rent on title. In view of the amendment of Mr. Eachara Menon that must be amended by omitting the words '15 times the annual rent' and substituting instead 'five times the Sirkar Revenue'. Both of you agree to the commutation of Sirkar Revenue, but the amount is different. The difference in the amendments is only with regard to title.

Dr. A. G. Menon.—For *Verumpattom*, it is even now five times the revenue.

Mr. K. Achyuta Menon.—Section 4 (5) (a) refers to title deeds also, and Mr. Eachara Menon wants an amendment only to section 4 (5) (a).

Dr. A. G. Menon.—Mr. Eachara Menon wants only '5 times the Sirkar Revenue' in all cases.

President.—The difference between Mr. Raja's amendment and Mr. Eachara Menon's amendment is that Mr. Raja wants the calculation at 5 times the Sirkar Revenue on lease and 15 times on title; but Mr. Eachara Menon would like to have a calculation at 5 times as regards both title and lease.

Dr. A. G. Menon.—Mr. Kunjunni Raja wants for *Verumpattom* 5 times the Sirkar Revenue. Now it is not so. It is 15 times the annual rent.

President.—Mr. Kunjunni Raja refers to 4 (5) (a) and (b), whereas Mr. Eachara Menon refers only to 4 (5) (a). It may be noted. There is no amendment proposed by Mr. Eachara Menon with regard to leases.

Mr. K. Achyuta Menon.—With regard to houses they calculate according to market value. 15 times is not mentioned there.

President.—Do you mean to say then that in the Bill, Mr. Raja's reference to (b) is unnecessary? (b) relates to houses, and 'annual rent' comes only in (a). I think the amendment with regard to (b) must be omitted, is it not so, Mr. Raja? In the Bill printed, the last clause makes a reference to section 4 (5) (a) and (b). In (b) there is no 'annual rent', there is only 'market value' of the house, which has no reference whatever to 'annual rent.' 'Annual rent' occurs only in (a).

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Mr. T. K. Krishna Menon.—In the proviso there is a reference to annual rent.

President.—The proviso takes in the house also. Am I to understand that you mean the recovery of the house also ? The proviso, which comes at the end of (a) and (b), is applicable both to (a) and (b). Clause (a) refers to land and garden, (b) refers to the house, the proviso refers to land, garden and the house. If your Bill does not refer to house, then, I think, the amendment should be to omit the words in 4 (5) (a), only, and in the proviso make specific reference to (5) (a), and omit the word house in the proviso. If the Bill does not apply to valuation and the payment of court fee for the house, no reference ought to have been made to (b), and in the proviso this expression 'house' must be taken away.

Mr. K. Achyuta Menon.—Suits on lease of houses—how to get over this difficulty ?

Mr. C. A. Kunjunni Raja.—I do not find any difficulty.

President.—So far as (a) is concerned, he wants to change it to 5 times and 15 times the Sirkar Revenue. So far as (b) is concerned, he wants no change.

Mr. C. A. Kunjunni Raja.—In the proviso the last words 'annual rent' have to be replaced by the words 'Sirkar Revenue' and the word 'house' will have to be omitted.

President.—It comes to this. Clause (b) may be left as it is. In the proviso the word 'house' must be omitted. That is what I said.

Mr. V. K. Kochunni Menon.—I do not think it worth while to consider this Bill at this stage. If it is introduced, the next step is to appoint a Select Committee.

President.—He may ask for the suspension of the rule of 15 days. This is a simple measure. No Select Committee need be appointed. As this Bill contains only a few clauses, this need not be taken through all the stages.

Mr. V. K. Kochunni Menon.—Such things may be done.

Rao Sahib Mr. T. V. Kasturi Ranga Ayyar.—The mover himself says that certain alterations are necessary. Some defects are noted in it. It is not so simple as it seems to be.

Mr. N. Padmanabha Menon.—They are only verbal alterations.

President.—I am trying to understand things before I invite a discussion on the subject. This is the way in which I put your position. Your position is, you want an amendment to section 4 (5) (a) which deals with leases, gardens and title deeds. You want the valuation to be made on leases, 5 times the Sirkar Revenue instead

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of 5 times the annual rent, and on title deeds and gardens 15 times the Sirkar Revenue instead of 15 times the annual rent. So far as 4 (5) (b) is concerned, that is, the recovery of possession of house, you do not propose any change. In the proviso, since you do not propose any change with reference to house, that word 'house' has to be omitted. That is your position.

Mr. C. A Kunjunni Raja.—And the words 'annual rent' at the end of the proviso must be changed into 'Sirkar Revenue'.

Mr. A. B. Salem.—As far as the houses are concerned, this Regulation will not benefit peoples living in towns but only those living in rural parts. You are now going to substitute '15 times the Sirkar Revenue' for '15 times the annual rent'. When we are giving benefits to the rural parts, I don't find any reason why it should not be given to the towns also. In rural parts also there may be houses. (ഗ്രാമപ്രദേശങ്ങളിൽ). Here it will be only house. When a suit for eviction for a house is brought, you will have to put 15 times the market value of houses. Why not make this applicable to that also ?

President.—But the mover does not want it.

Mr. A. B. Salem.—Then I will have to move an amendment and that is '15 times the principal tax'.

Rao Sahib Mr. T. V. Kasturi Ranga Ayyar.—This is not the stage for moving amendments.

President.—We will consider that. Now we are in the stage of understanding the Bill as brought by Mr. Raja. So Mr. Kunjunni Raja's Bill will have to be moved. Will you withdraw the clause in the light of what has been understood to be your purpose ?

Rao Sahib Mr. T. V. Kasturi Ranga Ayyar.—May I raise a point of order ? We are considering the principles of that particular Bill and not any amendments or alterations in them.

President.—We shall consider the amendments when we come to them.

Rao Sahib Mr. T. V. Kasturi Ranga Ayyar.—This is not the stage for the consideration. We are at a stage whether the second reading should be allowed or not.

President.—There is the principle of the Bill. There is a right already prescribed by law. A change of that right is necessary.

Rao Sahib Mr. T. V. Kasturi Ranga Ayyar.—What that change is, is stated in the Bill. The statement then may not be clear. The House is to accept the general principle only at this stage. When the principle of the Bill is not understood—I do not know whether we have come to that stage.

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President.—A proposal has been made to reduce the amount of court fee payable in connection with certain suits. That is the principle.

Rao Sahib Mr. T. V. Kasturi Ranga Ayyar.—Here we are only concerned with the principle of the Bill. Whether it has been properly put and all those questions will be considered at a later stage, if the House were to vote for the introduction of the Bill. So far as the present stage is concerned, we are concerned with the general principle involved in it.

Mr. A. B. Salem.—The principle is the reduction of the court fee.

Rao Sahib Mr. T. V. Kasturi Ranga Ayyar.—The general principle is '15 times the annual rent'; it is to be changed into '15 times the Sirkar Revenue'. That is the main point to be considered.

Mr. N. Padmanabha Menon.—All these changes may be introduced in the form of amendments at a later stage.

President.—We should understand the principle of the Bill, first.

Mr. N. Padmanabha Menon.—So there is no difficulty for the House to accept this principle, and allow the second reading.

President.—The principles to be considered are:—

(1) there must be a reduction of court fee, and

(2) there should be unanimity of law between this State and British India. There should be no reduction of the existing court fees then.

Mr. N. Padmanabha Menon.—We must make our law, as far as possible analogous with the British Law.

Mr. V. K. Kochunni Menon.—Then, in British India the court fee is 11¼.

Mr. N. Padmanabha Menon.—What I said was there should be unanimity between our law and the law prevailing in British India with regard to valuation of suits.

Mr. C. A. Kunjunni Raja.—Here it is 1,000 per cent higher than that in British India.

Mr. A. B. Salem.—I think what the Revenue Member said was that the rule of 15 days may be suspended, and the Bill be taken into consideration.

President.—I simply wanted to clear the ground with reference to the amendments. As they were brought, there were some portions which were not clear. It is not to interfere with the existing law with regard to court fee paid, but it is with regard to valuation of suits for recovery of lands, gardens and houses. But now it is noticed that the amendment to clause 4 (5)

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(b) is unnecessary, and with regard to the proviso, there must be some amendment. In the proviso, 'annual rent' should be omitted and 'Sirkar Revenue' should be inserted in its place, and the word 'house' must be omitted. I wanted his intention to be made out in clear language, that is all. Whether we do it at this stage or after the principles of the Bill are discussed, it is a matter to be considered.

Mr. A. B. Salem.— Justice should not be costly. It should be meted out as cheaply as possible among people, and there should be reduction of court fee. That is the principle. Here the law forces upon the litigant public to pay large amounts as court fee. That principle the House accepts, I think.

President.—What was the original rate of court fee in British India? Now it is 11¼.

Mr. A. B. Salem.—It was 7½ per cent. Everything they increased by 50 per cent.

President.—What was the reason for it?

Mr. A. B. Salem.—It was increased after the Ministry came into existence. They wanted more money to carry out the administration. So they thought they could make some money by increasing the rate of court fee. Even the fees on promissory notes they increased by 50 per cent.

President.—We shall just consider the principles of the Bill.

Mr. A. B. Salem.—The principle of the Bill is to make justice meted out as cheaply as possible. That is the only principle involved in this Bill.

Mr. N. Padmanabha Menon.—I support the Bill. It has been said that litigation ruins many, and the lawyers as a class are made a target of that attack. Then, laws' delay is alleged as the second reason for this ruinous litigation, and very little is said about the Government's part in making litigation costly. To me it appears that the fiscal policy of the Government is also equally responsible. It is to reduce the hardship that arises from the fiscal policy of the Government that this Bill is brought, and so far as the Bill seeks to bring this point into conformity with the British enactments, I do not think there will be much objection to the passage of the Bill in this House. With these few words I support the Bill.

Mr. Chakko Cheruvattur.—I rise to oppose the introduction of this Bill. The people that are likely to be most affected by the enactment of this Bill are the agricultural classes. The mover himself stated that not only the landlords but also the *kanomdars* will find it more easy to go to courts of law to get their tenants evicted. Eviction is always very hard upon a

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tenant, who had been making improvements upon the property. We all know that, according to the Tenancy Regulation, the value of improvements provided by the Regulation for trees, which are about to bear, is exceedingly small. Therefore, it is generally at that time that a scheming stranger takes it into his head to approach the landlord or *kanomdars* for the eviction of the existing tenant and transfer the same to him, promising to pay a higher rent. At that time the hardy cultivator, who had been spending his energy and money upon the garden, will find himself evicted. Similarly, a cultivator, who had been lowering the level of his land to make it more fit for cultivation, or who had been raising the level of his land to make it more fit for cultivation, will find it practically impossible to prove the way in which he has improved his land in a court of law by adducing oral evidence. So the result would be that absolutely no value of improvements will be paid to him. There seems to be something like a presumption in our courts of law that *pattoms* were fixed in olden days at much less rates than they are capable of yielding now. There is absolutely no reason to make such a presumption. If the lands are capable of yielding more, it must be due to the labours of the tenant. Instead of making that presumption, the courts generally take the presumption that in olden days lands were let for smaller *pattom*, and the burden is completely upon the tenant to make out effectively that he had made every improvement on the land, to its satisfaction. In such cases also, a scheming cultivator approaching the Jenmi asks him to let the land to him upon payment of higher rent. In this case also the Jenmi comes to court. In either case the cultivator is put to much difficulty. It is to make that grinding down easier for the upper classes, I think, that this Bill has been brought. Under the Tenancy Regulation it is provided that the landlord or the *kanomdar* can sell the tenant's right for all arrears of *pattom*, either *verumpattom* right or *kanom* right, as a first charge for all arrears of *pattom*. That, I say, is sufficient safeguard to enable the landlord to go to courts with a lesser court fee. Of course, the tenants, who are defaulters, should be made to feel by the sale of their holding that it is the first charge. Properties are made liable for the arrears. I found from one of the answers given on last Monday that eviction suits during the last six years were something like 2,800, and that even with this high rate of court fee. Suppose court fee is lessened ; I think the number will be doubled or quadrupled, and upon whom would the hardship be brought about? It is upon the ordinary cultivating tenant. Generally, cultivating tenants

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will not be rich men. They would be troubled by law suits, and by his position in life the tenant will not be in a position to bring to the notice of the court convincingly the nature of the improvements which he had made in the property or the value of it.

Dr. A. G. Menon.—The costs will go upon the tenant.

President.—The cost will have to be paid by the tenant. If the actual value for the improvements cannot be recovered, the tenant will have to think twice before he goes to a court.

Mr. Chakko Cheruvattur.—If he is a tenant who is rich enough to pay court fees, he will be in a position to convince the court of the value of the improvements. It is the tenant, who is unable to pay the court fee, or who is too poor to convince the court of the nature of the improvements or the value of the improvements he has made in the property, that will be prejudiced by this Bill. This will put him into great hardships. So I oppose the motion.

Mr. C. A. Ouseph.—Sir, I rise to oppose the motion. The problem of the landlord and the tenant is a longstanding one. The tenants have long been complaining that they are at the mercy of the landlords, and that they always stood in need of help. The Cochin Tenancy Regulation, which is now intended to be changed, is a measure enacted to help the tenants against the landlords. So also the high rate, if it is so, of fees demanded for eviction suit is also one, which is intended to prevent the landlord from bringing vexatious suits against the tenants. If that is true, there is absolutely no reason to reduce it. Sir, the tenant is possessing the land to cultivate it and not to play with it, as we come across with the tenant who does not do real labour in the land for his sake and for the sake of the country. Now, Sir, if you reduce the fee for these suits, what will be the results? Already the courts are pestered with too many eviction suits. If you still reduce the court fees, the tenant will never be at rest at the hands of the Jenmi. Therefore, I submit, there is absolutely no reason to reduce the fees now fixed. Suppose a Jenmi has to sue. The Jenmi has other several devices so as to safeguard them. Improvements have got their charge for his dues as well as for court fees. Then why should the Jenmi be afraid? There is only one in thousand in which he is unable to get his cost. That should not be taken into consideration to reduce the fees that have already been fixed, and that till now have not worked any disadvantage to the Jenmi. On the other hand, the disadvantage till now has been for the tenant. Just look at the number of eviction suits that are brought year after year. So it would not be a relief to the

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tenant also. There should not be relief to the tenant who does not obey and surrender the properties. Such tenants should be alleged. For these reasons I oppose the motion.

Mr. M. K. Raman.—I rise to oppose the introduction of the Bill. To me, it appears that a very powerful weapon is going to be placed in the hands of the Jenmies to be utilised to the detriment of the tenants. The Jenmi has various ways of disturbing the domestic peace of the tenants already in his hands. If the fee for bringing an eviction suit in a court of law is in any way reduced, that will cause a great deal of hardship and unnecessary trouble to the poor tenant. It is true that, in eviction suits, ultimately the cost of the suit will be brought to bear upon the shoulders of the tenants. But it is only the prohibitive cost of eviction suits now prevailing that perhaps prevents several of the Jenmies from instituting such suits. They find in the end that the transaction will not be profitable for the Jenmies, and therefore, many of the *Verumpattom* poor tenants are allowed to continue their holding now, because the Jenmi is afraid that there will be no possibility of realising the cost of the suit and other incidental expenses that they may have to incur. Not only that, but also I do not find any reason why the Government's court fee should be made less. If a Jenmi takes into his head to recover his land and deprive the poor tenant of his homestead, he must at least pay heavily for it. I think this measure would cause a great deal of trouble to the poor tenants, and therefore, I strongly oppose the motion.

Mr. I. E. Ambooken.—I oppose the measure. In the Objects and Reasons, the first sentence is that the Bill is intended to make eviction easier than at present.

That itself shows that it is a measure to make evictions easier. As the previous speakers have pointed out, if the eviction, so far as the Jenmi-Kudiyan question is concerned, is made easier, it will be a great suffering to the tenants. So I strongly oppose this measure.

Mr. K. Raman Menon.—What we have to consider in this matter is the object of the Bill. The court fee on the litigation is the duty which we pay to the Government for the public justice we get at its hands. Its object is neither to disable one party nor to strengthen the other party in the actual litigation itself. So the position taken, that the lowering of the court fee will ruin the tenant, and the present high rate of court fee will keep away the Jenmi from litigation, is not the real point at issue. The question is whether the principle proposed to be laid down, on which the court fee is to be calculated, is the better

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principle. Being a question affecting the fiscal matter we have to consider what revenue we have to pay to the Government for this justice which we get at its hands. For that we have to go to the neighbouring countries, viz., British Malabar and Travancore. There the basis on which court fee is calculated is not the fluctuating market value, but the fixed revenue which we call Land Revenue which is paid on land, and that should be the guide for us also. Let us get down a copy of the British Court Fee Act, and compare our own with it.

Mr. C. A. Kunjunni Raja.—Have the Government any idea of revising the court fee?

Mr. A. Eachara Menon.—A couple of years ago I brought an amendment, and the answer given was that the amendment to Court Fee Regulation is under consideration.

Mr. C. A. Kunjunni Raja.—If the Government will undertake to revise in the light of the Madras decision, I have no objection to withdraw the Bill. They have already got the Report of the Taxation Committee, and there are several suggestions given in that.

Mr. M. Krishna Menon.—I rise to oppose the Bill. The court fee is only the payment for the gate pass to enter the arena of litigation. The party will have to pay his vakil. He will have to pay witness batta, commission batta and other expenditures. At times he will have to meet the expenditure for half a dozen commissions. The immediate result of reducing the court fee is to take all these eviction cases to the Munsiff's court, instead of giving the parties a higher tribunal to decide between landlord and tenant. The interest of the Jenmi is to drag all these cases to the Munsiff's court, where it is difficult for the tenant to get proper legal advice and reliable persons to represent as commissioners. Further, as a matter of course, the tenant will have to fight in these courts to get his value of improvements. Invariably in an eviction suit the main question is one of improvements. Now, on the other hand, he gets a better tribunal, better legal advice and a direct appeal to the Chief Court. If the suit goes to the Munsiff's court, when it comes before the Hon'ble Judges, it becomes a second appeal, and it is summarily dismissed as there is no question of law. Now he gets the District Court as a trial court and a regular appeal to the Chief Court on the merits. Under the above circumstances, the only party that will be benefited by the reduction is the Jenmi. So I oppose the Bill.

Mr. K. Achyuta Menon.—With regard to the actual expenditure for money suits, we have $6\frac{1}{4}$ rupees for a Rs. 100 suit. If the present change is allowed, to recover the immovable

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property, the money value, as I understood from the Diwan Peishkar, is for *Verumpattom* land Rs. 2 for a property worth Rs. 100. The Jenmi will have to incur 15 times the Sirkar Revenue, that is, Rs. 30. So, in order to recover the properties, he will have to pay Rs. 30.

With regard to the system in Travancore, except with regard to the rates, it is ten times the gross receipts minus Sirkar Revenue multiplied by ten. Here it is only rent, annual rent multiplied by 15. I do not think there is much difference.

Mr. C. A. Kunjunni Raja.—In British India?

Mr. K. Achyuta Menon.—For recovery of land leased, it is not five times the revenue. For the recovery of the movable property, it is only five times the rent, so that our court fee is not five times the annual rent. Ours, based on leases, is five times, but if the property is not held on lease, then fifteen times.

President.—Mr. Kunjunni Raja, you can exercise the right of reply.

Mr. C. A. Kunjunni Raja.—If the Government is going to consider the matter, I do not wish to move the Bill.

President.—It has not come to any definite stage. I do not think we have taken up the question.

Mr. C. A. Kunjunni Raja.—From the observations made by the Government, I could understand what is the objection to the Government.

Mr. K. Achyuta Menon.—The Government is opposing the Bill.

Mr. C. A. Kunjunni Raja.—I beg leave of the Council to withdraw the Bill.

President.—The question before the House is whether leave be granted to Mr. C. A. Kunjunni Raja to withdraw the Bill.

(*The motion was put to the vote and carried.*)

A Bill to amend the Cochin Chief Court Regulation.

President.—The next item of business is the Bill standing in the name of Mr. C. A. Kunjunni Raja.

Mr. C. A. Kunjunni Raja.—I move for the introduction of a Bill to amend the Cochin Chief Court Regulation.

Mr. N. Padmanabha Menon.—I second it.

Mr. C. A. Kunjunni Raja.—This Bill, Sir, was opposed, contrary to the convention established in this House, even when leave to introduce it was sought last time.

All the reasons have been advanced at length then, and I do not think I can usefully add anything more to what I have already said then. I will only read one passage from a reply given by His Excellency the Governor of Bihar and Orissa

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